

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DANIEL MITCHELL,

Plaintiff,

v.

JAKE KRUEGER and
THOMAS CHICHA,

Defendants.

ORDER

11-cv-279-wmc

Plaintiff Daniel Mitchell filed a civil action pursuant to 42 U.S.C. § 1983, alleging that the defendants used excessive force against him in violation of the Eighth Amendment. On September 30, 2013, the court granted summary judgment in defendants' favor and dismissed this case. Mitchell has now filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e). (Dkt. # 69). He has also filed a brief in support of that motion. (Dkt. # 70).

To prevail on a motion under Rule 59(e), the moving party must identify an error of law that merits reconsideration of the judgment. *See Obrieht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008); *Sigsworth v. City of Aurora, Ill.*, 487 F.3d 506, 511-12 (7th Cir. 2007). In support of his request for relief, Mitchell raises the same arguments that were considered previously on summary judgment. Rule 59(e), however, "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008) (quoting 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2810.1, at 127-28 (2d ed. 1995)). In other words, a Rule 59(e) motion is not a proper vehicle to advance arguments or legal theories that could and should have been made before the district court entered

judgment or to present evidence that was available earlier. *See Sigsworth*, 487 F.3d at 512 (citing *LB Credit Corp. v. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995)).

Mitchell does not otherwise show that the dismissal order was entered in error or that he is entitled to relief from the judgment. Accordingly, the Rule 59(e) motion will be denied.

ORDER

IT IS ORDERED that plaintiff Daniel Mitchell's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) (Dkt. # 69) is DENIED.

Entered this 14th day of March, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge